IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1269 of 2005

For Approval and Signature:

HON'BLE MR JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

BANSILAL RAJAAMBHAI BHATT - Petitioner(s)

Versus

DIVISIONAL CONTROLLER - Respondent(s)

==========

Appearance :

MR JV JAPEE for Petitioner No(s).: 1.

MR ASHISH M DAGLI for Respondent No(s).: 1.

==========

CORAM : HON'BLE MR JUSTICE M.R. SHAH

Date : 25/07/2005

ORAL JUDGMENT

1. Rule. Service of Rule is waived by Shri A.M.Dagali, learned advocate on behalf of the respondent – Corporation. With the consent of the learned advocates for the parties, the matter is heard finally today.

2. In this petition the petitioner workman has challenged the legality and validity of the judgment and award passed by the Labour Court, Himatnagar dated 3.2.2004 passed in Reference (LCH) No.127 of 1998 in dismissing the the same and confirming the order passed by the disciplinary authority in dismissing the petitioner from services. The petitioner was serving as the Conductor and was on duty on 17.9.1994 on Himatnagar – Ajmer route. The bus was checked by the checking squad and it was found by the checking officer that he has not issued the tickets to three passengers having collected the fare of Rs.87/- and not issuing the tickets to one passenger traveling from Bhilwada to Ajmer and not collected the fare from the said passenger. Departmental inquiry came to be initiated against him for the said misconduct with regard to misappropriation and not issuing the tickets and after conclusion of the inquiry, the charge with regard to not issuing the tickets to three passengers though fare was collected and not issuing the tickets to one passenger came to be established and proved. It is required to be noted that the petitioner gave in writing and/or given statement to the effect that he has collected the fare but not issued tickets to three passengers. The disciplinary authority thereafter having afforded an opportunity to the petitioner passed an order dismissing the

petitioner from service by order dated 6.4.1996. The petitioner has raised the industrial dispute challenging the order of dismissal which was referred to the Labour Court,. Himatnagar for its adjudication being Reference (LCH) No.127 of 1998. The Labour Court having considered the evidence also held that the charge with regard to misappropriation has been proved and that he has not issued tickets to three passengers though the fare was collected and did not issue tickets to one passenger without collecting the fare. The Labour Court taking into account the fact that there were 33 defaults in the credit of the petitioner in past and earlier twice the petitioner was dismissed for the similar type of misconduct i.e not issuing the tickets though the fare was collected and the petitioner was reinstated, the labour court dismissed the reference and even did not think it fit to exercise the powers and / or jurisdiction under Section-11-A of the Industrial Disputes Act. Being aggrieved and dissatisfied with the judgment and award passed by the Labour Court, Himatnagar dated 3.2.2004 passed in Reference (LCH) No.127 of 1998, the petitioner has preferred the present special civil application under Articles 226 and 227 of the Constitution of India.

3. Initially, this Court has issued notice upon the respondents to consider the case of the petitioner for lesser punishment, however, Shri

A. M. Dagali, learned advocate appearing on behalf of the respondent corporation has submitted that in view of the fact that charge of misappropriation is proved against the petitioner and earlier twice the petitioner was dismissed from service for similar misconduct, it is not possible for the respondent corporation to impose lesser punishment and/ or to take back the petitioner on duty. Under the circumstances, this Court is considering the present petition on merits.

4. Shri J.V.Japee, learned advocate appearing on behalf of the petitioner has mainly submitted that the labour court has not properly appreciated and not considered the statements of the three passengers who have subsequently stated that they have not paid fare to the petitioner conductor workman and therefore, finding of the labour court with regard to misappropriation has been vitiated and it is contrary to the evidence on the record. He has also further submitted that so far as the past defaults considered by the Labour Court, the same cannot be the basis for imposition of the penalty for the present conduct. He has relied upon the decision rendered by the learned Single Judge of this Court in case of G.S.R.T.C. V. MADHAVSINGH B. PARMAR reported in 2000 (4) GLR 3090 in support of his submission that while imposing extreme penalty, the employer should first consider whether the delinquent has

committed an misconduct with an intention to gain any revenue of the employer. Under the circumstances, it is requested to allow the present special civil application and/ or to impose any other lesser punishment.

5. Shri A.M.Dagali, learned advocate appearing on behalf of the respondent corporation has strongly opposed the present special civil application and has submitted that once the charge of misappropriation and the charge of not issuing tickets though the fare was collected are proved, the same are very serious misconducts and therefore, considering the decisions of the Hon'ble Supreme Court referred to above, it is requested to dismiss the present special civil application. It is further submitted that even considering the past conduct and considering the fact that there were in all 33 defaults against the petitioner and that earlier twice the petitioner was dismissed for the similar type of misconduct, this is a fit case for which except dismissal, no other order is warranted and therefore, under the circumstances, it is requested to dismiss the present special civil application.

6. Heard the learned advocates for the parties.

7. As held by the Hon'ble Supreme Court in case of REGIONAL

MANAGER RSRTC V. GHANSHAYM SHARMA reported in (2002) 10 SCC 330, the act of bus conductor of carrying passengers without issuing tickets amounts to dishonesty or grave negligence and for such misconduct, punishment of removal from services is justified. In another decision where similar type of misconduct was alleged against the bus conductor with regard to non issuance of tickets to the passengers, the Hon'ble Supreme Court in case of REGIONAL MANAGER RAJASTHAN STATE ROAD TRANSPORT CORPORATION V. SOHANLAL, reported in (2004) 8 SCC 218 has held that the workman had indulged in misconduct which is not only led to monetary loss to the corporation but the corporation has also lost confidence in the said workman and therefore, to continue such an employee in employment of the corporation by virtue of judicial order is also again an act of misplaced sympathy which can find no foundation in law or equity.

8. It is not in dispute that the charge against the petitioner was with regard to not issuing tickets to three passengers though fare was collected. In fact, the passengers has admitted the same at the time of checking and had admitted that though the fare was collected, tickets were not issued by him. The petitioner has relied upon the statements of passengers who were examined during the departmental inquiry to the

effect that they have not paid fare to the petitioner conductor. However, considering the statement of the petitioner himself admitting that he has not issued tickets though the fare was collected, the Labour Court has rightly not believed the statements of the passengers who appear to have been retracted from their statements subsequently. Assuming that the fare was not paid to the petitioner as suggested by the three passengers, fact remains with regard to not issuing tickets and not issuing tickets is also a serious misconduct. However, considering admission of the petitioner himself, the factum of misappropriation has been proved and it is held on appreciation of evidence that the petitioner has not issued tickets though fare was collected from three passengers. As held by the Hon'ble Supreme Court of India, the post of bus conductor is the post of trust and when it is found that the conductor has not issued the tickets and / or not issuing the tickets though the fare was collected is a serious misconduct and it is nothing but dishonesty and the only order which can be passed is dismissal. As held by the Hon'ble Supreme Court of India in case of REGIONAL MANAGER, U.P.SRTC, ETAWAH AND OTHERS V. HOTILAL AND ANOTHER, (2003) 3 SCC 605 that if a person is holding the post of trust and confidence like the petitioner workman commits misappropriation whether of a small or a large amount, irrespective of the size of the

amount, must be viewed very seriously and such type of misconduct ought to be handled with an “iron hand”. Even this Court also in case of GSRTC V. BHIKHABHAI MANJIBHAI, reported in 1997 (1) GLR 416 has held that misappropriation should be viewed with degree of seriousness and in that case the order passed by the Labour Court reinstating the workman / conductor whose services were terminated for the proved misconduct of misappropriation of fare, came to be set aside. Considering the facts and circumstances of the instant case, there were 33 past defaults against the petitioner and in the past twice the petitioner was dismissed for the similar misconduct of not issuing the tickets though the fare was collected. Therefore, when the order passed by the disciplinary authority dismissing the petitioner from services, is confirmed and the Reference is dismissed, it cannot be said that the judgment and award passed by the labour court is in any way illegal and / or so perverse which requires any interference by this Court while exercising the jurisdiction under Articles 226 and 227 of the Constitution of India. As stated hereinabove, even the labour court has also considering the past defaults as well as the charge of misappropriation being proved against the petitioner did not think it fit to exercise the powers under Section-11-A of the Industrial Disputes Act, 1947.

9. For the reasons stated hereinabove, there is no substance in the present special civil application and the same requires to be dismissed and is accordingly dismissed.

Rule is discharged with no order as to costs.

[M.R.Shah, J.]

=kailash=